

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAID O'CLOVER, INC., Debtor, a
Washington corporation, et al.,

Plaintiffs,

v.

CHEVRON USA INC., d/b/a CHEVRON
PRODUCTS COMPANY, a Pennsylvania
corporation, et al.,

Defendants.

NO. CV-03-3077-EFS

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT CHEVRON U.S.A,
INC.'S MOTION FOR PARTIAL
SUMMARY JUDGMENT
DISMISSAL OF PLAINTIFFS'
CLAIMS UNDER WASHINGTON'S
GASOLINE DEALER ACT**

On August 17, 2005, the Court heard oral argument on Defendant Chevron U.S.A., Inc.'s Motion for Partial Summary Judgment Dismissal of Plaintiffs' Claims Under Washington's Gasoline Dealer Act ("GDBRA Motion"), (Ct. Rec. 106). Mr. Randall P. Beighle appeared on behalf of Defendant Chevron U.S.A., Inc. ("Chevron"), while Plaintiffs Maid O'Clover, Inc. ("MOCC"), Maid O'Clover, South, Inc. ("MOCS"), and Maid O'Clover, East, Inc. ("MOCE"), collectively referred to as "MOC," were represented by Mr. James Perkins. After reviewing the submitted material, taking oral argument, and considering relevant authority, the

1 Court is fully informed and hereby **grants in part** and **denies in part**
2 Chevron's GDBRA Motion, (Ct. Rec. 106).¹

3 **I. Gasoline Dealer Bill of Rights Act ("GDBRA")**

4 The GDBRA governs business dealings between motor fuel refiner-
5 suppliers and motor fuel retailers. See R.C.W. § 19.20. To recover
6 damages under the GDBRA, a plaintiff must prove five elements: (1) a
7 "motor fuel refiner-supplier" entered into a "motor-fuel franchise" with
8 the plaintiff; (2) the plaintiff was a "motor fuel retailer;" (3) the
9 refiner-supplier violated R.C.W. § 19.120.070 or .080; (4) the violation
10 caused damages to the plaintiff; and (5) the amount of those damages. *Id.*

11 Motor fuel refiner-suppliers generally include all entities who
12 refine crude oil into petroleum and supply that petroleum to retail
13 outlets. R.C.W. § 19.120.010(6). The parties do not dispute Chevron's
14 status as a motor fuel refiner-supplier under the GDBRA. An entity is
15 a motor fuel retailer if it "resells motor fuel entirely at one or more
16 retail motor fuel outlets pursuant to a motor fuel franchise entered into
17 with a refiner-supplier." *Id.* § 19.120.010(7).

18 Motor fuel franchises arise from "any oral or written contract,
19 either expressed or implied, between a motor fuel refiner-supplier and
20

21 ¹The factual background of this case and standard of review for
22 motions for summary judgment can be found in the Court's September 16,
23 2005, Order Denying Plaintiffs' Motion for Partial Summary Judgment and
24 Granting in Part and Denying in Part Defendant Chevron U.S.A., Inc.'s
25 Motion for Partial Summary Judgment Under the Washington Franchise
26 Investor Protection Act, (Ct. Rec. 341).

1 a motor fuel retailer under which the motor fuel retailer is supplied
2 motor fuel for resale to the public under a trademark owned or controlled
3 by the motor fuel refiner-supplier. . . ." *Id.* § 19.120.010(5). The
4 parties dispute whether MOCS, MOCC, and MOCE were motor fuel retailers
5 or participants in a motor fuel franchise with Chevron under the GDBRA.
6 If motor fuel franchises do not exist between the parties or the MOC
7 entities are not motor fuel retailers, the GDBRA claims must be
8 dismissed.

9 **II. Pre-1995 Jobber Agreement**

10 Chevron does not believe MOC's Complaint alleges any viable
11 arguments under the GDBRA regarding Chevron's conduct prior to the 1995
12 Jobber Agreement. Pursuant to this belief, Chevron claims the MOC
13 entities' statuses prior to the 1995 Jobber Agreement are irrelevant, but
14 does not dispute MOCS, MOCC, and MOCE were each motor fuel retailers
15 independently engaged in motor-fuel franchises prior to 1995. Chevron
16 asserts that all alleged GDBRA claims stem from Chevron's purported
17 misconduct under the 1995 Jobber Agreement after it had been formed. MOC
18 disagrees with Chevron's position, claiming Chevron "wrongly ignores" all
19 issues of pre-1995 Jobber Agreement liability alleged in this case.

20 In its Complaint, MOC alleges, among other things, that Chevron (1)
21 "offered to sell motor fuel franchises by means of written and oral
22 communications which included untrue statements of material fact and made
23 material omissions;" and (2) "engaged in acts, practices and courses of
24 business which deceived plaintiffs." (Ct. Rec. 166-2 at 19.) MOC asserts
25 this conduct was in violation of its rights under the GDBRA with regard
26 to its pre-1995 Jobber Agreement relationships with Chevron. As noted

1 above, neither party disputes the MOC entities were motor fuel retailers
2 prior to the 1995 Jobber Agreement, or that they were each motor fuel
3 franchisees of Chevron. As such, the Court sees no reason why alleged
4 untrue statements or material omissions made by Chevron could not be
5 introduced at trial to demonstrate Chevron violated its GDBRA duties to
6 the MOC entities prior to the 1995 Jobber Agreement's formation. Thus,
7 Chevron's motion is denied to the extent it asks the Court to dismiss
8 GDBRA claims occurring prior to the 1995 Jobber Agreement.

9 **III. 1995-1998**

10 Chevron also moves the Court to dismiss all GDBRA claims arising
11 from conduct after the 1995 Jobber Agreement was entered into by MOCS
12 until 1998, when MOCS began selling fuel to Ahtanum General Store, a
13 retailer not owned or operated by any MOC entity. Chevron believes each
14 MOC entity ceased being a motor fuel retailer, subject to motor fuel
15 franchises under the GDBRA, once MOCS entered into the 1995 Jobber
16 Agreement and began selling motor fuel to MOCC and MOCE.

17 **A. MOCC & MOCE**

18 Chevron argues MOCC and MOCE are neither motor fuel retailers or
19 parties to a motor fuel franchise under the GDBRA because Chevron was no
20 longer obligated to directly provide their gasoline. Chevron relies
21 heavily on the fact the 1995, 1998, and 2000 Jobber Agreements were
22 solely entered into by MOCS, who became a Chevron jobber and ultimately
23 sold the gasoline it purchased from Chevron to MOCC and MOCE. Because
24 Chevron only dealt with MOCS, Chevron contends it did not supply gasoline
25 to MOCC or MOCE, and as such, cannot be found to have been involved in
26 a motor fuel franchise agreement with these two particular Plaintiffs.

1 Furthermore, Chevron asserts the lack of a franchise agreement with MOCC
2 and MOCE precludes them from being motor fuel retailers because entities
3 only become motor fuel retailers under the GDBRA by way of mutual
4 agreement.

5 MOCC and MOCE respond by claiming their motor fuel franchise
6 relationships either stem from an implied contract it had with Chevron
7 or by way of MOCS entering the 1995 Jobber Agreement as their agent. MOC
8 emphasizes that motor fuel franchise agreements only require the
9 franchisee be supplied with fuel by the franchiser, and not necessarily
10 purchase fuel from the franchiser. R.C.W. § 19.120.070(5). MOC also
11 notes that motor fuel franchises may be premised on a implied contract.
12 Based on these statutory allowances, MOC believes MOCC and MOCE's each
13 entered implied contracts with Chevron to become or remain franchised
14 retailers of Chevron's products. MOC points to numerous circumstances
15 it believes demonstrate these implied motor fuel franchise contracts
16 existed. These circumstances include, but are not limited to, the
17 following: (1) Chevron collectively encouraged all MOC entities to move
18 from being direct-served to jobber-served; (2) Chevron mandated all MOC
19 entities selling Chevron product conform with its image and operation
20 standards; and (3) Chevron required MOCS to deliver its product not only
21 to MOCS's retail outlets, but also those owned by MOCC and MOCE.

22 Even if implied contracts are not found to exist, MOC urges the
23 Court to find MOCS was acting as MOCC's and MOCE's agent when it entered
24 the Jobber Agreements. In which case, MOCS's assent would have served
25 as the other entities assent to the Jobber Agreements and formed the
26 basis of MOCC and MOCE's motor fuel franchises with Chevron.

1 Because courts must construe all evidence in favor of the non-moving
2 party when considering a motion for summary judgment, the Court in this
3 instance cannot grant Chevron's motion on this issue. Genuine issues of
4 material fact exist as to whether implied franchise agreements existed
5 between Chevron and MOCC and MOCE, which would grant these Plaintiffs
6 protections under the GDBRA after they became jobber-served by MOCS in
7 1995.

8 **B. MOCS**

9 Chevron believes MOCS ceased being a motor fuel retailer under the
10 GDBRA when it entered the 1995 Jobber Agreement and first began selling
11 fuel to MOCC and MOCE. Chevron points to the definition of motor fuel
12 retailer, which requires entities, such as MOCS, to resell their motor
13 fuel "entirely at one or more retail motor fuel outlets. . . ." R.C.W.
14 § 19.120.010(7). Thus, according to Chevron, because MOCS was selling
15 fuel to MOCC and MOCS, it was engaged in extra-retail transactions,
16 precluding it from GDBRA protection.

17 In opposition, MOC essentially asks the Court to ignore MOCS's sales
18 to MOCC and MOCE because they are predominantly owned by the same owners.
19 According to MOC, due to the companies' special relationships, MOCS's
20 motor fuel transfers were mere formalities that should not be considered
21 sales because the wholesale price was not marked-up. Despite the appeal
22 of MOC's argument, the Court cannot ignore the plain and clear statutory
23 language used to define who is and is not a motor fuel retailer.
24 Entities who do not "entirely" resell their fuel at their retail outlets
25 are not motor fuel retailers for purposes of the GDBRA. For whatever
26 reason, MOCC's, MOCS's, and MOCE's owners, although nearly identical for

1 each entity, desired to create and maintain three independent business
2 entities. At different times, the owners of the MOC entities likely
3 reaped benefits from the maintenance of the three independent corporate
4 identities. However, in this instance it appears there was a drawback
5 to segregated ownership and just as the owner's enjoyed benefits from
6 owning three separate corporate entities, they must now accept its
7 drawbacks.

8 Thus, because MOCS did not "entirely" resell its fuel at its own
9 retail outlets after the 1995 Jobber Agreement was entered into, it was
10 not a motor fuel retailer under the GDBRA and may not use the statute
11 against Chevron for claims of misconduct occurring after its status as
12 a motor fuel retailer ended when it became a jobber. Thus, summary
13 judgment is granted with regard to MOCS's complaints under the GBDRA
14 after it became a jobber and sold fuel to entities it did not own,
15 including MOCC and MOCE.

16 **IV. Post-1998**

17 The parties agree that once MOCS began selling motor fuel to
18 unrelated third parties in 1998, *i.e.* Ahtanum General Store, it ceased
19 being a motor fuel retailer under the GDBRA and may not bring claims
20 against Chevron for misconduct occurring thereafter. Thus, the Court
21 grants summary judgment consistent with this agreement. However, the
22 parties disagree as to whether MOCC and MOCE ever ceased being a motor
23 fuel retailer, because they never sold motor fuel to anyone other than
24 consumers. As discussed above, the material issue of whether MOCC and
25 MOCE are motor fuel retailers is genuinely disputed. Due to this
26 dispute, the Court denies summary judgment with regard to whether post-

1 1998 GDBRA issues may be brought by MOCC or MOCE, because if MOCC or MOCE
2 were motor fuel retailers involved in motor fuel franchises with Chevron
3 between 1995 and 1998, they continued being franchises after 1998 and
4 vice versa.

5 Accordingly, **IT IS HEREBY ORDERED:** Defendant Chevron U.S.A., Inc.'s
6 Motion for Partial Summary Judgment Dismissal of Plaintiffs' Claims Under
7 Washington's Gasoline Dealer Act, (**Ct. Rec. 106**), is **GRANTED IN PART**
8 (post-1995 with regard to MOCS) and **DENIED IN PART** (pre-1995 Jobber
9 Agreement with regard to MOCC, MOCS, and MOCE, post-1995 with regard to
10 MOCC and MOCS).

11 **IT IS SO ORDERED.** The District Court Executive is directed to enter
12 this Order and provide a copy to counsel.

13 **DATED** this 21st day of September, 2005.

14
15 S/ Edward F. Shea

16 EDWARD F. SHEA
17 United States District Judge

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